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the servant done in the course of his employment, whether authorized or not. No engineer has authority to kill cattle on the track, yet if wrongfully done, whether wilfully or negligently, the company must pay the damage. In Mr. Bishop's excellent discussion of the master's liability, he remarks that it is often difficult to determine whether the act is in the course of the servant's employment or not, and adds: "One case about which there would probably be no disagreement, holds that if a brakeman kicks a person illegally attempting to board a train, the road is responsible, but not if the person is not so attempting. For, to keep intruders off the cars is within the proper functions of a railroad servant, so that if he employs improper means, the road must answer for it; but it is wholly outside of those functions to commit assault and battery on persons in the neighborhood of the track." Bishop's Non-Contract Law, 613. In other words, the courts will judicially take notice of the fact that it is within the course of the brakeman's employment to protect the rights and property of the company against trespassers. *Rounds v. Delaware etc. R. Co.*, 64 N. Y. 135.

In *Gerarty v. Stern*, 30 Hun, 426, a merchant was held liable for an assault committed by a clerk upon a customer, supposed to be a spy from a rival establishment, though there was no proof that the clerk had authority to assault spies from other establishments; so, where the driver of an omnibus, in supposed furtherance of his master's business, recklessly and wilfully drove into a dense crowd, in order to force a way through, the master was held responsible: *Eckert v. St. Louis Transfer Co.* 2 Mo. App. 36. So where a driver, in order to extricate the master's carriage, which had become entangled with others in a crowded street, wilfully struck the horses of another with his whip: *Croft v. Allison*, 4 B. & Ald. 590. See further illustrations in Shearman & Redfield on Neg. 147-150; 2 Thompson on Neg. 886-7; *Ware v. Canal Co. (La.)*, 35 Am. Dec. 192 and note; *Noblesville etc. Co. v. Gause (Ind.)*, 40 Am. Rep. 224 and note.

In a case just decided by the Supreme Court of Alabama, *Case v. Hulebush*, 26 South, 155, June 7, 1899, it is held that a tax collector is responsible for an assault made upon a citizen by his deputy, as the result of a quarrel in the tax collector's office, over an illegal fee demanded by the deputy. The court held that the tort was clearly in the course of the deputy's employment, though wholly unauthorized. In Mississippi the same doctrine was applied to the case of an assault by an express agent, in his office, growing out of a quarrel with the plaintiff in reference to an alleged overcharge on a shipment. *Richberger v. American Express Co.*, 18 South. 922. The note to *Pitchie v. Waller (Conn.)*, 27 L. R. A. 161, contains an elaborate review of the authorities on this subject.

MUNICIPAL CORPORATIONS—SCROLL AS CORPORATE SEAL—ACTION OF COVENANT.—In *Dist. Columbia v. Camden Iron Works* (27 Washington Law Reporter, 462) it is held that a contract executed by the Commissioners of the District of Columbia, under their hands, with scrolls annexed, intended as an official act, has the force and effect of a deed or sealed instrument, and binds the corporation and not the individual Commissioners; and an action of covenant may be maintained against the District thereon, notwithstanding the corporate seal of the District is not affixed thereto.

It was contended by counsel for the District that the contract was not a specialty under the seal of the municipal corporation of the District of Columbia, but a

simple contract merely, and therefore an action of covenant would not lie thereon against the corporation. On this point the court said :

"With respect to the first of these propositions, we think there is no difficulty, and that the court below was entirely right in holding the contract to be the deed—a specialty—executed in a lawful manner by the municipal corporation of the District of Columbia. The municipal corporation has the right to adopt a seal, and from time to time to change it. It has the right, therefore, to execute contracts under seal. The three Commissioners provided for in the organic act passed by Congress, June 11, 1878 (20 Stat. 103), are the chief executive officers of the municipal government, and contracts executed by them, under their hands and seals, intended as and manifestly official acts, have the force and effect of deeds or sealed instruments, according to their import, and bind the corporation and not the individual Commissioners. Respecting seals, says Judge Dillon (1 Dill. Mun. Corp., sec. 190): 'The same general principles apply to private and to municipal corporations. Thus, a corporation of the latter class would doubtless be bound equally with a private corporation by any seal which has been *authoritatively affixed* to an instrument requiring it, though it be not the seal regularly adopted; citing for this proposition the cases of *Bank etc. v. Railroad Co.*, 30 Vt. 150; *Tenney v. Lumber Co.*, 43 N. H. 343; *Mill Dam Foundry v. Hovey*, 21 Pick. 417; *Porter v. Railroad Co.*, 37 Me. 349. A corporation may adopt any seal that it chooses for the time being or *pro hac vice*; and although it may have adopted a particular seal, it will be bound by a deed otherwise sufficient, which is sealed *with any seal*. *Bank etc. v. Railroad Co.*, *supra*; *Tenney v. Lumber Co.*, *supra*; *South Baptist Soc. v. Clapp*, 18 Barb. 36; *Hutchins v. Byrnes*, 9 Gray, 367; *Mann v. Pentz*, 2 Sand. Ch. 257. The form or material of the seal is quite immaterial; it is rather the *insignia* that furnishes the evidence of the seal. The object of the seal is to give character to the instrument and to enable it to be distinguished and recognized for that which it was intended to be. This is as well effected by a scroll with the word seal written within it, or with the initials 'L. S.' *Hastings v. Vaughan*, 5 Cal. 318.

"Several of the cases cited in the brief of counsel for the appellee are very analogous to the present case; and without reciting the facts of those cases, it will suffice simply to refer to them by title, as they have been cited and approved in cases of more conclusive authority upon this court. The cases referred to are those of *Stinchfield v. Little*, 1 Greenl. Rep. 231; *State v. McCauley*, 15 Cal. 429; *Hopkins v. Mehaffey*, 11 Sergt. & R. 116; *Tenney v. Lumber Co.*, 43 N. H. 344.

"In the cases of *Sheets v. Selden*, 2 Wall. 177, 187, and *Jacksonville etc. R. Co. v. Hooper*, 160 U. S. 514, the decisions of the Supreme Court of the United States would seem to be quite conclusive of the present question. In the first of the cases just mentioned, the court, by Mr. Justice Field, said: 'It may be stated generally that when a deed is executed, or a contract is made on behalf of the State by a public officer duly authorized, and *this fact appears upon the face of the instrument*, it is the deed or contract of the State, notwithstanding that the officer may be described as one of the parties, and may have affixed his individual name and seal. In such cases the State alone is bound by the deed or contract, and can alone claim its benefits.' And the court cites in support of this principle the cases of *Stinchfield v. Little* and the *State v. McCauley*, *supra*.

"In the second and more recent of the Supreme Court cases mentioned, that of *Jacksonville R. Co. v. Hooper*, in an action of covenant, and where the instrument

sued on was executed in very much the same form and terms as was the instrument in the present case, it was held, Mr. Justice Shiras delivering the opinion, that 'whether an instrument is under seal or not is a question for the court upon inspection; whether a mark or character shall be held to be a seal depends upon the intention of the executant, as shown by the paper;' citing the case of *Hackers' Appeal*, 121 Pa. St. 192, and *Pillow v. Roberts*, 13 How. 472.

"In the present case there is no question made as to whether the contract is the contract of the District of Columbia, and binding upon it; that is conceded. But it is denied by the appellant that the contract is its deed, upon which an action of covenant can be maintained. This contention is wholly without foundation, as is clearly shown by the authorities to which we have referred."

And so the ancient doctrine of *cera impressa* is pushed further and further into oblivion, where we could wish the whole miserable seal business (excluding that done on the Pribiloff islands) might go with it.

Pillow v. Roberts, 13 How. 472, followed by *Pierce v. Indseth*, 106 U. S. 546, gave the finishing blow to the idea that "wax, or some other tenacious substance," was essential to a seal, and permitted the impression to be upon the paper alone. The recent case of *Jacksonville etc. R. Co. v. Hooper*, 160 U. S. 514, goes a bow-shot further, in holding that a mere scroll is sufficient for a corporate seal, if manifestly intended as such.

Whether a scroll may serve as a corporate seal in Virginia, is at least questionable under our statute. Sec. 5, sub-sec. 12, of the Virginia Code, provides that: "In cases in which the seal of any corporation, court, or public office shall be required to be affixed to any paper executed by a corporation, or issuing from such court or office, the word 'seal' shall be construed to include an impression of such official seal made upon the paper alone, as well as an impression made by means of a wafer, or of wax affixed thereto. And in any case in which the seal of any natural person shall be required to a paper, it shall be sufficient for such person to affix to such paper a scroll by way of seal."

Substantially the same provision is contained in section 2841 of the Code: "Any writing to which a natural person making it shall affix a scroll by way of seal, shall be of the same force as if it were actually sealed. The impression of a corporate or an official seal on paper or parchment alone shall be as valid as if made on wax or other adhesive substance."

By strong inference, both of these statutes exclude the use of a scroll as a corporate seal. The inference is weakened, however, by the circumstance that at the time these statutes were originally drawn, it was the accepted doctrine that wax or some other tenacious substance was a *sine qua non* of a corporate seal, and the evident purpose was to relax rather than to preserve the common law technicalities of the seal.

It should be borne in mind that in Virginia, even though the seal be of wax from my Lord Coke's own private stock, and as big as the shield of Achilles, it is no seal unless acknowledged as such in the body of the instrument. *Bradley Salt Co. v. Norfolk etc. Co.*, 95 Va. 461; 3 Va. Law Reg. 722.